

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ARCTICDX, INC., ARCTICAX, INC.,)
and ARCTICAX US LTD.,)

Plaintiffs,

V.

SEQUENOM, INC. and SEQUENOM)
CENTER FOR MOLECULAR)
MEDICINE, LLC,)

Defendants.

NO. 2:12-cv-81-JRG-RSP

Jury Trial Demanded

CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE

The parties having considered the facts and applicable law and having agreed to the entry of this Consent Judgment, it is therefore found, adjudged, and decreed as follows:

1. Plaintiffs ArcticDx, Inc., ArcticAx, Inc., and ArcticAx US Ltd. (collectively “Arctic”) instituted Civil Action No. 2:12-cv-00081 in the Eastern District of Texas seeking a declaratory judgment of non-infringement of U.S. Patents Nos. 8,053,190 (“the ‘190 patent”), 7,867,727 (“the ‘727 patent”), 7,695,909 (“the ‘909 patent”), 7,351,524 (“the ‘524 patent”), and 8,088,579 (“the ‘579 patent”). Arctic further sought a claim for infringement of U.S. Patent No. 8,114,592 (“the ‘592 patent”).

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1338(a), and venue is proper in this District pursuant to 28 U.S.C. § 1391.

3. Defendants Sequenom, Inc. and Sequenom Center for Molecular Medicine, LLC (collectively “Sequenom”) and Plaintiffs Arctic have agreed to a compromise and settlement of this action and entered into a Settlement Agreement on October 1, 2012.

4. The parties shall fully comply with their respective obligations set forth in the settlement agreement entered between the parties in this action.

5. The parties agree that since, and so long as, Arctic's Age-Related Macular Degeneration testing products and related activities, including those designated with the name Macula Risk (collectively, hereinafter "Macula Risk") does not test for SNP rs 10490924, which is in the ARMS2 gene on chromosome 10, it does not infringe any claim of the '190 patent.

6. The parties agree that since, and so long as, Arctic's Macula Risk does not detect for the presence or absence of a deletion of at least 1,000 base pairs in the genomic sequence encoding the complement factor H (CFI-1) gene and complement Factor H-related 4 (CFHR4) gene, or a deletion of at least 10,000 base pairs in the genomic sequence encoding CFHR1 and/or CFHR3, which are on chromosome 1, it does not infringe any claim of the '727 patent.

7. The parties agree that since, and so long as, Arctic's Macula Risk does not test for SNP rs 10490924, which is in the ARMS2 gene on chromosome 10 or identify an allelic variant isoform of the gene product of LOC387715, wherein said allelic variant isoform is either Ser or Ala at position 69 of LOC387715, it does not infringe any claim of the '909 patent.

8. The parties agree that since, and so long as, Arctic's Macula Risk does not test for changes in levels of complement pathway proteins, including C3, C3a, and C5b-9, to diagnose AMD, it does not infringe any claim of the '524 patent.

9. The parties agree that since, and so long as, Arctic's Macula Risk does not test for SNP rs 800292, which is in the CFH gene on chromosome 1 by detecting the presence or absence of isoleucine at position 62 of the CFH protein as an indicator that the subject is at a reduced risk of developing AMD, it does not infringe any claim of the '579 patent.

10. It is hereby stipulated and agreed, pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, that all claims between the parties in this action, including the claim for infringement of the '592 patent and declaratory judgment claims for noninfringement and invalidity of the '190 patent, the '727 patent, the '909 patent, the '524 patent and the '579 patent, be dismissed with prejudice.

11. This Consent Judgment shall finally conclude and dispose of this litigation and shall bind the parties and their affiliates and successors.

12. The parties agree the confidentiality obligations in this litigation survive dismissal as set forth in the parties' Settlement Agreement.

IT IS HEREBY FOUND, ORDERED, ADJUDGED, AND DECREED THAT:

A. This Court retains exclusive jurisdiction of this action for the purpose of insuring compliance with this Judgment and enforcement of the Settlement Agreement entered by the parties on October 1, 2012.

B. Arctic does not infringe the '190 patent, the '727 patent, the '909 patent, the '524 patent and the '579 patent.

C. No appeal shall be taken by any party from this Consent Judgment, the right to appeal being expressly waived by all parties.

D. This Consent Judgment shall finally conclude and dispose of all claims with prejudice, including the claim for infringement of the '592 patent and declaratory judgment claims for noninfringement and invalidity of the '190 patent, the '727 patent, the '909 patent, the '524 patent and the '579 patent.

E. Each party shall bear its own costs and attorneys' fees.

F. This final Consent Judgment shall be entered hereto, forthwith, without further notice.

The Clerk is directed to enter this final Consent Judgment forthwith.

IT IS SO ORDERED.

SIGNED this 16th day of November, 2012.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

HEREBY STIPULATED AND AGREED TO:

Dated: November 8, 2012

Respectfully submitted,

By: /s/ John W. Cox
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*Attorneys for Defendants Sequenom,
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of the foregoing via the Court's CM/ECF system per local rules on this the 8th day of November 2012. Any other counsel of record will be served by First Class U.S. mail on this same date.

/s/ Ross Allen
Ross Allen